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Partnership--Criminal Liability of the Entity--Partner's Participation Not Necessary for Culpable Intent (United States v. A & P Trucking Co., 358 U.S. 121 (1958))

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PARTNERSHIP — CRIMINAL LIABILITY OF THE ENTITY — PARTNER'S PARTICIPATION NOT NECESSARY FOR CULPABLE INTENT. — Defendant partnerships were charged, as entities, with criminal violations of regulations¹ promulgated by the Interstate Commerce Commission. Partnerships are not specifically mentioned as subject to criminal prosecution for such violations² and the defendant contended that the aggregate theory of partnerships would not allow conviction of the entity without legislative authority. The Court, in reversing a dismissal of the informations, held that a partnership could violate the statute in question without the knowledge and participation of the partners as individuals, even with the statutory provision for a knowing violation,³ although such conviction could not lead to punishment of the individual partners. *United States v. A & P Trucking Co.*, 358 U.S. 121 (1958).

As a general rule, the doctrine of *respondeat superior* is opposed to our traditional concepts of criminal law.⁴ Many exceptions appear in the criminal law, however, when no intent is necessary⁵ and the servant or agent is acting within the scope of his employment.⁶

There are certain crimes to which vicarious liability has never been applied,⁷ and which are intrinsically unfit for the doctrine.⁸ Where *respondeat superior* is applicable, however, a difficulty lies in determining what prior conditions must be met.

¹ 18 U.S.C. § 835 (1952). Defendants were also charged with violations of 71 Stat. 352 (1957), 49 U.S.C. § 322(a) (Supp. V, 1958), amending 49 Stat. 564 (1935). See notes 3 and 15 *infra*.

² 18 U.S.C. § 2 (1952).

³ 18 U.S.C. § 835 (1952): "[W]hoever knowingly violates any such regulation shall be fined . . . or imprisoned. . . ." 49 Stat. 564 (1935), 49 U.S.C. § 322(a) (Supp. V, 1958): "Any person knowingly and willfully violating any provision . . . shall . . . be fined. . . ."

⁴ See Sayre, *Criminal Responsibility for the Acts of Another*, 43 HARV. L. REV. 689, 702 (1930).

⁵ *United States v. Boynton*, 297 Fed. 261 (E.D. Mich. 1924) (use of real property in violation of the National Prohibition Act); *Hershorn v. People*, 108 Colo. 43, 113 P.2d 680 (1941) (illegal sale of intoxicating liquor); *City of Spokane v. Patterson*, 46 Wash. 93, 89 Pac. 402 (1907) (blasting within city limits); *Bryan v. Adler*, 97 Wis. 124, 72 N.W. 368 (1897) (violation of civil rights law by a waiter). See generally *Annotts.*, 139 A.L.R. 306 (1942), 121 A.L.R. 642 (1939).

⁶ See CRANE, *PARTNERSHIP AND OTHER UNINCORPORATED ASSOCIATIONS* § 54(g) (2d ed. 1952).

⁷ "[T]here are certain crimes of which a corporation cannot be guilty; as, for instance, bigamy, perjury, rape, murder, and other offenses, which will readily suggest themselves to the mind. *United States v. John Kelso Co.*, 86 Fed. 304, 306 (N.D. Cal. 1898). It is rarely pointed out, but should be realized, that a partnership is as 'incapable' of committing the same crimes; that is, the offenses are not of a type, the consequences of which are usually attributable to associated groups." STEVENS, *PRIVATE CORPORATIONS* 366 n.24 (2d ed. 1949).

⁸ See CLARK & MARSHALL, *CRIMES* § 101 (5th ed. 1952).

The main distinction between the federal and New York positions on vicarious criminal liability is the degree of authority necessary in the agent. In a leading New York case,⁹ the corporate defendant was charged with larceny because of a practice of reselling fur coats which had already been purchased and on which deposits had been accepted. The Court of Appeals recognized that a corporation could commit this crime but reversed the conviction because of a lack of proof in the record that a corporate officer had participated or acquiesced in the resale. In prosecutions for crimes such as larceny, of which intent is a necessary element, New York requires that the intent be found or acquiesced in by an officer of the defendant corporation.

Federal courts have not generally so restricted the persons in whom the guilty intent may be found. Agents and officers may transmit criminal guilt as well as civil liability.¹⁰ In a decision of the United States Supreme Court it was established that, if acting within the scope of their agency, agents may cause their corporate principals to be criminally liable.¹¹ In *St. Johnsbury Trucking Co. v. United States*,¹² which dealt with this problem as well as with the statute for violation of which the defendant in the principal case was prosecuted, Chief Judge Magruder stated that where Congress has proscribed "knowing" violations, "it is usually held to be enough to charge the corporation with guilt if any agent or servant of the corporation, acting for the corporation in the scope of his employment, has the guilty knowledge. . . ." ¹³ In federal courts, therefore, lack of knowledge by the directors and officers, and care on their part to see to it that violations do not occur, are not sufficient to absolve a corporation from guilt, provided that the employees charged with the duty of compliance with the regulations had knowledge of the violation.

In the case of a *malum prohibitum* statute not requiring culpable intent, New York seems to be more nearly in accord with the federal view, the courts holding that mere benefit is sufficient to hold the

⁹ *People v. Canadian Fur Trappers Corp.*, 248 N.Y. 159, 161 N.E. 455 (1928).

¹⁰ "No distinctions are made in these cases between officers and agents, or between persons holding positions involving varying degrees of responsibility." *United States v. George F. Fish, Inc.*, 154 F.2d 798, 801 (2d Cir. 1946) (violation of the Emergency Price Control Act of 1942 by a salesman). "[I]t is too late in the day to say that such offense, within the scope of the employee's authority, cannot be brought home to the corporation." *United States v. Armour & Co.*, 168 F.2d 342, 343 (3d Cir. 1947) (Emergency Price Control Act of 1942 violated in spite of express instructions to contrary by defendant).

¹¹ *New York Cent. R.R. v. United States*, 212 U.S. 481, 493-95 (1909).

¹² 220 F.2d 393 (1st Cir. 1955).

¹³ *Id.* at 398.

principal liable, without proof of knowledge in the officers or directors.¹⁴

A closely related problem in this area of vicarious criminal liability is the vulnerability of the agent for the crimes of his principal. It should be observed that conviction of the business organization will not necessarily lead to an unjust imprisonment of its officers or partners. The statute involved in the principal case, which provides for imprisonment in addition to a fine, has been interpreted as requiring culpable intent.¹⁵ Conviction of the partnership itself results therefore only in the fine. "[T]he natural inference, when a statute prescribes two independent penalties, is that it means to inflict them so far as it can, and that if one of them is impossible, it does not mean on that account to let the defendant escape."¹⁶ But criminal liability is personal and, even when a partner commits the act, those partners who do not participate are not subject to imprisonment for crimes in which guilty intent is an element.¹⁷

The factor of culpable intent is well established as a necessary element in any violation of the relevant section of the regulations of the Interstate Commerce Commission¹⁸ and it should not be presumed that in the instant case the Supreme Court has, by implication, made

¹⁴ In *People v. Raphael*, 190 Misc. 582, 72 N.Y.S.2d 748 (War Emergency Ct. [Magis. Ct.] 1947), defendant corporation was acquitted of violation of rent control regulations while its superintendent was convicted for taking and keeping an illegal bonus. The court held that for corporate liability for the crime of any agent or employee it must be shown that, 1) the corporation has benefited from the crime or, 2) officers participated or, 3) officers authorized the act or, 4) the corporation had knowledge of the crime or, 5) it was chargeable with negligence in not having such knowledge. *Id.* at 584, 72 N.Y.S.2d at 750.

¹⁵ 18 U.S.C. § 835 (1952) was subject to the Supreme Court's consideration in *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 342 (1952), and was interpreted as requiring culpable intent as a necessary element of the offense. At this time it should also be noted that 49 Stat. 564 (1935), 49 U.S.C. § 322(a) (Supp. V, 1958), while forbidding "knowing and willful" violations, was interpreted in *United States v. Gunn*, 97 F. Supp. 476 (W.D. Ark. 1950) as a statute which "... does not require proof of such specific intent on the part of a defendant charged with an offense under the statute. These words are words of many meanings, depending upon the context in which they are used. In statutes denouncing offenses involving turpitude the use of such words usually implies an evil purpose or criminal intent but when referring to acts not in themselves wrong, the words do not usually carry any such implication." *Id.* at 480.

¹⁶ *United States v. Union Supply Co.*, 215 U.S. 50, 55 (1909).

¹⁷ See *Levin v. United States*, 5 F.2d 598, 603 (9th Cir. 1925); *CRANE, PARTNERSHIP AND OTHER UNINCORPORATED ASSOCIATIONS* § 54(g) (2d ed. 1952).

¹⁸ *Boyce Motor Lines, Inc. v. United States*, *supra* note 15; *United States v. Chicago Express, Inc.*, 235 F.2d 785 (7th Cir. 1956). "By using the word 'knowingly' in § 835, we think Congress . . . removed violations from the classification familiarly known as offenses *malum prohibitum*, public welfare, and civil offenses." *Id.* at 786. *St. Johnsbury Trucking v. United States*, 220 F.2d 393 (1st Cir. 1955); *United States v. Deer*, 131 F. Supp. 319 (E.D. Wash. 1955).

the section merely *malum prohibitum*. The decision that a partnership, without the knowledge or participation of the partners, can violate this section must be taken as an application to partnerships of the principles previously applied in the federal courts to corporations, *i.e.*, that agents or employees as well as officers can cause an imposition of criminal sanctions.¹⁹ As the government appeal was only from a dismissal of the informations, the Court does not indicate what degree of authority or responsibility an employee must have in order to criminally bind the partnership.

At this point a distinction should be made between the corporate and partnership theories. The corporation is an artificial person capable of activity only through agents. The partnership is a group of individuals each of whom ordinarily participates in the conduct of the business as a co-owner. To hold a partnership liable for a crime requiring intent, it would appear that the intent must be found in one capable of knowing or willing for the partnership, *i.e.*, a partner. It could possibly be argued that a managing agent or dispatcher in a partnership's trucking business is a person of such stature that his knowledge or intent could be attributed to the partnership. Such reasoning would be closely akin to that upon which the corporation is held responsible for the acts of an officer not a member of the board of directors.

However, the Court in the principal case does not indicate that criminal liability for knowing or willful crimes will be imposed only when a partner or *responsible* employee has the necessary intent. Rather, it seems to rest its conclusion on the fact that the criminal fine is levied only against firm assets, not the individual assets of the partners.²⁰ Yet the fact remains that if the necessary intent was not present in the party charged with the crime, no crime was committed and neither fine nor imprisonment may be imposed.

There are different reasons for the imposition of vicarious liability for torts and for crimes.²¹ In tort the purpose of *respondeat superior* is to place the burden of risk on the business owners and thus distribute the losses over a wider area. As to those criminal acts to which the doctrine applies, the main concern is to prevent a reoccurrence of the offense. With this in mind, the Court's decision to adopt the popular concept of the partnership as an entity responsible for the acts of its agents seems proper. But as long as guilty intent is an element in violations of section 835, partners should not be held liable for offenses committed by employees in whom they did not vest authority.

¹⁹ See notes 10-13 *supra* and accompanying text.

²⁰ "The corollary is, of course, that the conviction of a partnership cannot be used to punish the individual partners, who might be completely free of personal guilt. As in the case of corporations, the conviction of the entity can lead only to a fine levied on the firm's assets." *United States v. A & P Trucking Co.*, 358 U.S. 121, 127 (1958).

²¹ *BALLANTINE, CORPORATIONS* § 114 (rev. ed. 1946).